

DIGITAL TECH CORPS ACT OF 2002

APRIL 9, 2002.—Committed to the Committee of the Whole House on the State of
the Union and ordered to be printed

Mr. SENSENBRENNER, from the Committee on the Judiciary,
submitted the following

R E P O R T

together with

DISSENTING VIEWS

[To accompany H.R. 3925]

[Including cost estimate of the Congressional Budget Office]

The Committee on the Judiciary, to whom was referred the bill (H.R. 3925) to establish an exchange program between the Federal Government and the private sector in order to promote the development of expertise in information technology management, and for other purposes, having considered the same, reports favorably thereon with amendments and recommends that the bill as amended do pass.

CONTENTS

	Page
The Amendment	2
Purpose and Summary	2
Background and Need for the Legislation	2
Hearings	3
Committee Consideration	3
Vote of the Committee	3
Committee Oversight Findings	3
Performance Goals and Objectives	4
New Budget Authority and Tax Expenditures	4
Congressional Budget Office Cost Estimate	4
Constitutional Authority Statement	5
Section-by-Section Analysis and Discussion	6
Changes in Existing Law Made by the Bill, as Reported	9
Markup Transcript	11
Dissenting Views	37

The amendments (stated in terms of the page and line numbers to the committee print document containing the text of the amendment as reported by the Committee on Government Reform) are as follows:

Page 8, lines 12-13, strike “, notwithstanding section 209 of title 18,”.

Page 14, strike lines 4 through 6 and insert the following:

“(v) assigned from a private sector organization to an agency under chapter 37 of title 5.”.

Page 14, line 10, strike the comma after “is”.

Page 14, line 10, strike “within the past three years,”.

Page 17, after line 7, insert the following:

(b) AMENDMENT TO TITLE 18, UNITED STATES CODE.—Section 209 of title 18, United States Code, is amended by adding at the end the following:

“(g)(1) This section does not prohibit an employee of a private sector organization, while assigned to an agency under chapter 37 of title 5, from continuing to receive pay and benefits from such organization in accordance with such chapter.

“(2) For purposes of this subsection, the term ‘agency’ means an agency (as defined by section 3701 of title 5) and the Office of the Chief Technology Officer of the District of Columbia.”.

Page 17, line 8, strike “(b)” and insert “(c)”.

PURPOSE AND SUMMARY

H.R. 3925, the “Digital Tech Corps Act of 2002,” establishes an employee exchange program for information technology management personnel between the Federal Government and the private sector. H.R. 3925 provides Federal employees throughout the Federal Government with additional on-the-job training and education. Additionally, the bill will enhance the ability of Federal agencies to attract and retain quality information technology experts.

BACKGROUND AND NEED FOR THE LEGISLATION

H.R. 3925 was introduced by Representatives Burton and Davis on March 12, 2002. The Committee on Government Reform reported the bill, as amended, favorably on March 14, 2002. The legislation was then referred to the Committees on the Judiciary and Ways and Means for a 1-day referral on March 18, 2002 and that referral was extended to April 9, 2002.

H.R. 3925, the “Digital Tech Corps Act of 2002”, is in response to a growing concern that the Federal Government is unable to attract and retain quality information technology experts. This problem is magnified with the increased use of technology throughout the Federal Government.

The Government Accounting Office (GAO) has found that the Federal Government is facing a substantial human capital shortage and the shortage will intensify because 34 percent of the Federal workforce will be eligible to retire in the next 5 years. This short-

fall is even worse for the information technology fields. When a GAO official testified before the Government Reform Committee last summer on the earlier version of the bill, GAO explained that “estimated that fifty percent of the government’s technology workforce will be eligible to retire by 2006.”¹

Information technology is one of the top priorities for the Nation in all respects including national security, law enforcement and economic growth. As the Congress continues to provide more technology resources to the Executive branch, it must also address the human resource issues. This bill is designed to assist the government to attract mid-level information technology (IT) managers and retain its current workforce. The goal of the legislation is to create an exchange program to “help Federal agencies retain quality IT managers by offering them exposure to new management concepts and leading-edge organizations. This exchange program should make Federal service more attractive, and at the same time, improve the skills of Federal IT managers.”²

The Committee on Government Reform explained that: “The Digital Tech Corps enables an exchange program that can begin as soon as an agency negotiates an exchange agreement with a private sector entity. Private sector IT volunteers for the Tech Corps will come into government at the GS-11 through 15 levels for a period of 6 months to 2 years, but they will continue to receive pay and benefits from their private sector employer. Federal agency IT volunteers will have the opportunity to go to work for leading-edge private sector companies for a similar period and will retain their government pay and benefits. This type of public-private exchange program will allow for greater knowledge transfer and cross-pollination of ideas, cultures, and processes between the public and private sectors.”³

HEARINGS

The Committee on the Judiciary did not hold hearings on H.R. 3925, the “Digital Tech Corps Act of 2002.”

COMMITTEE CONSIDERATION

On March 20, 2002, the Committee met in open session and ordered favorably reported the bill H.R. 3925, as amended, by a voice vote, a quorum being present.

VOTE OF THE COMMITTEE

No recorded votes were taken on the bill H.R. 3925 during Committee consideration.

COMMITTEE OVERSIGHT FINDINGS

In compliance with clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee reports that the findings and recommendations of the Committee, based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Rep-

¹H.R. Rep. No. 107-379, pt. 1, at 6.

²H.R. Rep. No. 107-379, pt. 1, at 7.

³H.R. Rep. No. 107-379, pt. 1, at 7.

representatives, are incorporated in the descriptive portions of this report.

PERFORMANCE GOALS AND OBJECTIVES

The bill is intended to improve the ability of Federal agencies to attract and retain information technology personnel by providing them an opportunity to work at leading-edge private sector companies and gain greater knowledge and an exchange of ideas with the private sector while they retain their Federal pay and benefits. At the same time, the bill will offer private sector employees, in return, an opportunity to exchange ideas and cultures in the Federal work force will continuing to receive their private sector pay and benefits.

NEW BUDGET AUTHORITY AND TAX EXPENDITURES

Clause 3(c)(2) of House rule XIII is inapplicable because this legislation does not provide new budgetary authority or increased tax expenditures.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

In compliance with clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the Committee sets forth, with respect to the bill, H.R. 3925, the following estimate and comparison prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, March 29, 2002.

Hon. F. JAMES SENSENBRENNER, Jr., *Chairman,*
Committee on the Judiciary,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 3925, the Digital Tech Corps Act of 2002.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Matthew Pickford (for Federal costs), who can be reached at 226-2860, and Susan Sieg Tompkins (for the State and local impact), who can be reached at 225-3220.

Sincerely,

DAN L. CRIPPEN, *Director.*

Enclosure

cc: Honorable John Conyers, Jr.
Ranking Member

H.R. 3925—Digital Tech Corps Act of 2002.

CBO estimates that enacting H.R. 3925 would cost less than \$500,000, subject to the appropriation of the necessary funds. These amounts include administrative and reporting costs for the Office of Personnel Management (OPM) and the General Accounting Office (GAO). Enacting the bill could also increase the collections of civil and criminal fines, but CBO estimates that any in-

crease would not be significant. Because the bill could affect direct spending and receipts (civil and criminal fines), pay-as-you-go procedures would apply.

The bill contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would impose no costs on State, local, or tribal governments. The District of Columbia could benefit from provisions of the bill that would authorize employees in the Office of the Chief Technology Officer to be assigned to a private-sector organization or an employee of such organization to be assigned to the Office.

H.R. 3925 would establish an exchange program between the Federal Government and the private sector to promote information technology management. The bill would allow the exchange of employees for up to 2 years between the public and private sectors to share information management talent and expertise. Private-sector employers could be reimbursed for all or part of the cost of their employees' assignment with the Federal Government. Alternatively, H.R. 3925 would allow for Federal agencies to accept voluntary employment services from the private sector.

A recent report by the GAO indicates that the demand for qualified information technology workers will exceed the supply, hence it is unlikely that private-sector employers will be willing to part with many such employees for extended periods. Any exchange of employees that involves reimbursement to the private sector would be subject to the availability of appropriated funds for salary, training, and educational expenses.

Violations of the provisions of H.R. 3925 could be subject to civil and criminal fines, so the Federal Government might collect additional fines if the bill is enacted. Collections of civil fines are recorded as receipts and deposited into the general fund of the Treasury. Criminal fines are recorded in the budget as governmental receipts (revenues), which are deposited in the Crime Victims Fund and spent in subsequent years. CBO expects that any additional receipts or direct spending would be less than \$500,000 each year.

On March 18, 2002, CBO prepared a cost estimate for H.R. 3925 as ordered reported by the House Committee on Government Reform on March 14, 2002. The two estimates differ because the Judiciary Committee's version of H.R. 3925 would place additional reporting requirements on OPM and GAO, and because it would impose new civil and criminal penalties.

The CBO staff contacts for this estimate are Matthew Pickford (for Federal costs), who can be reached at 226-2860, and Susan Sieg Tompkins (for the State and local impact), who can be reached at 225-3220. The estimate was approved by Peter H. Fontaine, Deputy Assistant Director for Budget Analysis Division.

CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, the Committee finds the authority for this legislation in Article I, section 8, of the Constitution.

SECTION-BY-SECTION ANALYSIS AND DISCUSSION

SECTION 1. SHORT TITLE; TABLE OF CONTENTS

This section provides that the short title of the bill is the “Digital Tech Corps Act of 2002.”

SECTION 2. FINDINGS

This section of the bill provides the following congressional findings—

- (1) unless action is taken soon, there will be a crisis in the government’s ability to deliver essential services to the American people;
- (2) by 2006, over 50 percent of the Federal Government’s information technology workforce will be eligible to retire, creating a huge demand in the Federal Government for high-skill workers;
- (3) despite a 44 percent decrease in the demand for information technology workers in the private sector, the Information Technology Association of America reported in 2001 that employers will need to fill over 900,000 new information technology jobs and will be unable to find qualified workers for 425,000 of those jobs;
- (4) to highlight the urgency of this situation, in January 2001, the General Accounting Office added the Federal Government’s human capital management to its list of high-risk problems for which an effective solution must be found;
- (5) despite efforts to increase flexibility in Federal agencies’ employment practices, compensation issues continue to severely restrain recruitment for Federal agencies; and
- (6) an effective, efficient, and economical response to this crisis would be to create a vibrant, on-going exchange effort designed to share talent, expertise, and advances in management between leading-edge businesses and Federal agencies engaged in best practices.

SECTION 3. INFORMATION TECHNOLOGY EXCHANGE PROGRAM.

This section of the bill provides that in general Subpart B of part III of title 5, of the United States Code is amended by adding Chapter 37—Information Technology Exchange Program at the end.

*“Chapter 37—Information Technology Exchange Program”**Section 3701. Definitions.*

This new section of title 5 defines “agency” and “detail.”

Section 3702. General Provisions.

This new section of title 5 authorizes the head of any agency to arrange for the assignment of an employee of the agency to a private sector organization or an employee of a private sector organization to the agency.

Additionally, this section requires that each agency exercising this authority provide for a written agreement between the agency

and the employee concerned regarding the terms and conditions of the employee's assignment. These assignments may be terminated for any reason at any time. The assignments may be for 6 months to 1 year. The duration may be extended in 3-month increments for an additional year. The Chief Information Officers Council may assist in the administration of this chapter.

Additionally, this section includes a sunset provision that requires this Act to sunset after 5 years.

Section 3703. Assignment of employees to private sector organizations.

This new section of title 5 governs the assignments of Federal employees to private sector organizations. Under this section a Federal employee detailed to a private sector organization retains his government pay, credits for step increases, retention, worker's compensation, sick and leave accrual, insurance and retirement benefits. Additionally, subparagraph (d) of this section provides that Federal employees detailed under this program will continue to be covered by the Federal Tort Claims Act and any other applicable tort liability statutes.

Section 3704. Assignment of employees from private sector organizations.

This new section of title 5 governs the assignment of private sector employees to Federal Government agencies. This section requires that private sector employees adhere to Federal employee ethics, revolving door prohibitions (prohibits lobbying for a period of time after leaving government employment), and accountability provisions during and after their assignments in the Digital Tech Corps. Much of these requirements are within title 18 of the United States Code. The Committee believes any exceptions to these requirements must be included under title 18 and amended the bill accordingly.

Specifically, a private sector employee under § 3704 is deemed a Federal Government employee for purposes of:

- (1) The Hatch Act (Chapter 73). This puts a Tech Corps private sector volunteer that is detailed to a Federal agency under the provisions of the Hatch Act.
- (2) 18 U.S.C. §§ 201, 203, 205, 207, 208, 209, 603, 603, 607, 643, 654, 1905, and 1913. These criminal law provisions apply to Digital Tech Corps participants and include: (1) acting as a lobbyist (for 1 year after the exchange); (2) accepting bribes for official work; (3) aiding in the obtaining of contracts (1 year after); (4) suing the government (other than in the proper discharge of official duties); (5) revolving door activities; (6) financial conflicts of interest; (7) making political contributions; (8) intimidation to secure political contributions; (9) receipt of political contributions; (10) embezzlement; (11) disclosure of confidential information/trade secrets (for 3 years after detail); and (12) lobbying with appropriated moneys.
- (3) 31 U.S.C. §§ 1343, 1344, and 1349(b): These provisions set out that Tech Corps detailees are forbidden to have government funded transportation furnished for their use.

- (4) Ethics in Government Act of 1978.
- (5) Section 1043 of the Internal Revenue Code of 1986: This provision affects sale of property to resolve financial conflicts of interest and specifies how the IRS treats these sales.
- (6) 41 U.S.C. 423 (Section 27 of the Office of Federal Procurement Policy Act). This provision prohibits Tech Corps detailees from disclosing procurement information, during and for 3 years after the detail.⁴

Sec. 3705. Application to Office of Chief Technology Officer of the District of Columbia.

This new section of title 5 provides that the Digital Tech Corps program would apply to IT workers and agencies in the District of Columbia Government.

Sec. 3706. Reporting Requirements.

This section requires the GAO and the Office of Personnel Management (OPM) to report to the House and Senate Committees on Government Reform.

Sec. 3707. Regulations.

This section requires that the Office of Personnel Management (OPM) set forth regulations regarding this act.

Sec. 4. Ethics Provisions.

Subparagraph (a) of this section of the bill would amend title 18 U.S.C. § 207(c)(2)(A) to cover the private sector employee assigned to a Federal agency. Section 207 restricts a Federal employee from lobbying the Federal Government for specific duration after the termination of that employee's Federal job. This section would extend the prohibition to the private sector employees who are detailed to a Federal agency under the Digital Tech Corps Program.

Subparagraph (b) of this section of the bill would amend title 18 U.S.C. § 1905 to cover the private sector employee assigned to a Federal agency. Section 1905 prohibits Federal employees from disclosing confidential information. This section would extend that prohibition to the private sector employees who are detailed to a Federal agency under the Digital Tech Corps Program and extend that prohibition for 3 years after the detail has ended.

Subparagraph (c) of this section would amend title 18 U.S.C. 207 by adding a new section. That section would prohibit a former private detailee, for 1 year after the end of the detail, from knowingly representing or aiding, counseling, or assisting in representing any other person in connection with any contract with the agency to which the private employee was detailed.

Subparagraph (d) of this section would amend section 27 of the Office of Federal Procurement Policy Act (41 U.S.C. 423) by adding a new sentence that would restrict an employee of a private sector organization assigned to an agency from knowingly disclosing contractor bid or proposal information or source selection information during the 3-year period after the end of the detail.

⁴H.R. Rep. No. 107-379, pt. 1, at 11.

The Committee believes that it is important to apply these prohibitions and restrictions consistently throughout the Federal Government to ensure the integrity of the Federal workforce as well as this exchange program.

Sec. 5. Report on Existing Exchange Programs.

This section of the bill would require that OPM prepare and submit within a year of enactment to the Senate and House Government Reform Committees a report identifying all existing exchange programs.

Sec. 6. Technical and Conforming Amendments.

This section of the bill would provide technical and conforming amendments.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported by the Committee on Government Reform, are shown in Report 107–379 part 1, filed on March 18, 2002.

The Committee on the Judiciary adopted amendments (shown at the beginning of this report) to the bill as reported by the Committee on Government Reform. Changes in provisions of existing law that would result from those amendments and differ from the changes that would result from the bill as reported by the Committee on Government Reform are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, and existing law in which no change is proposed is shown in roman):

TITLE 5, UNITED STATES CODE

* * * * *

PART III—EMPLOYEES

* * * * *

CHAPTER 37—INFORMATION TECHNOLOGY EXCHANGE PROGRAM

* * * * *

§ 3704. *Assignment of employees from private sector organizations*

(a) *IN GENERAL.*—An employee of a private sector organization assigned to an agency under this chapter is deemed, during the period of the assignment, to be on detail to such agency.

(b) *TERMS AND CONDITIONS.*—An employee of a private sector organization assigned to an agency under this chapter—

(1) may continue to receive pay and benefits from the private sector organization from which he is assigned;

* * * * *

TITLE 18, UNITED STATES CODE

PART I—CRIMES

* * * * *

CHAPTER 11—BRIBERY, GRAFT, AND CONFLICTS OF INTEREST

* * * * *

§ 207. Restrictions on former officers, employees, and elected officials of the executive and legislative branches

(a) * * *

* * * * *

(c) ONE-YEAR RESTRICTIONS ON CERTAIN SENIOR PERSONNEL OF THE EXECUTIVE BRANCH AND INDEPENDENT AGENCIES.—

(1) * * *

(2) PERSONS TO WHOM RESTRICTIONS APPLY.—(A) Paragraph (1) shall apply to a person (other than a person subject to the restrictions of subsection (d))—

(i) * * *

(iii) appointed by the President to a position under section 105(a)(2)(B) of title 3 or by the Vice President to a position under section 106(a)(1)(B) of title 3, **[or]**

(iv) employed in a position which is held by an active duty commissioned officer of the uniformed services who is serving in a grade or rank for which the pay grade (as specified in section 201 of title 37) is pay grade O-7 or above~~[.]~~; *or*

* * * * *

(v) *assigned from a private sector organization to an agency under chapter 37 of title 5.*

* * * * *

§ 209. Salary of Government officials and employees payable only by United States

(a) * * *

* * * * *

(g)(1) *This section does not prohibit an employee of a private sector organization, while assigned to an agency under chapter 37 of title 5, from continuing to receive pay and benefits from such organization in accordance with such chapter.*

(2) *For purposes of this subsection, the term “agency” means an agency (as defined by section 3701 of title 5) and the Office of the Chief Technology Officer of the District of Columbia.*

* * * * *

CHAPTER 93—PUBLIC OFFICERS AND EMPLOYEES

* * * * *

§ 1905. Disclosure of confidential information generally

Whoever, being an officer or employee of the United States or of any department or agency thereof, any person acting on behalf of the Office of Federal Housing Enterprise Oversight, or agent of the Department of Justice as defined in the Antitrust Civil Process Act (15 U.S.C. 1311–1314), *or being an employee of a private sector organization who is or was assigned to an agency under chapter 37 of title 5*, publishes, divulges, discloses, or makes known in any manner or to any extent not authorized by law any information coming to him in the course of his employment or official duties or by reason of any examination or investigation made by, or return, report or record made to or filed with, such department or agency or officer or employee thereof, which information concerns or relates to the trade secrets, processes, operations, style of work, or apparatus, or to the identity, confidential statistical data, amount or source of any income, profits, losses, or expenditures of any person, firm, partnership, corporation, or association; or permits any income return or copy thereof or any book containing any abstract or particulars thereof to be seen or examined by any person except as provided by law; shall be fined under this title, or imprisoned not more than one year, or both; and shall be removed from office or employment.

* * * * *

MARKUP TRANSCRIPT

BUSINESS MEETING

WEDNESDAY, MARCH 20, 2002

HOUSE OF REPRESENTATIVES,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The Committee met, pursuant to notice, at 10:50 a.m., in Room 2141, Rayburn House Office Building, Hon. F. James Sensenbrenner, Jr. [Chairman of the Committee] presiding.

Chairman SENSENBRENNER. The Committee will be in order.

First up is a proposed change in the name of the Subcommittee on Crime to the Subcommittee on Crime, Terrorism, and Homeland Security.

This is in keeping with the true style of other Committees in the Capitol who fancy names in expanded jurisdiction.

And without objection, the name change is approved, and all Members may insert statements in the record.

Now, second on the agenda is H.R. 3925, which establishes an exchange program between the Federal Government and the private sector to promote the development of expertise in information technology management and for other purposes.

[The bill, H.R. 3925, follows:]

Union Calendar No.

107TH CONGRESS
2D SESSION

H. R. 3925

[Report No. 107-]

To establish an exchange program between the Federal Government and the private sector in order to promote the development of expertise in information technology management, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MARCH 12, 2002

Mr. TOM DAVIS of Virginia (for himself and Mr. BURTON of Indiana) introduced the following bill; which was referred to the Committee on Government Reform

MARCH , 2002

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in *italic*]

[For text of introduced bill, see copy of bill as introduced on March 12, 2002]

A BILL

To establish an exchange program between the Federal Government and the private sector in order to promote the development of expertise in information technology management, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2 *This Act may be cited as the “Digital Tech Corps Act*
3 *of 2002”.*

4 **SEC. 2. FINDINGS.**

5 *Congress finds that—*

6 *(1) unless action is taken soon, there will be a*
7 *crisis in the government’s ability to deliver essential*
8 *services to the American people;*

9 *(2) by 2006, over 50 percent of the Federal Gov-*
10 *ernment’s information technology workforce will be el-*
11 *igible to retire, creating a huge demand in the Fed-*
12 *eral Government for high-skill workers;*

13 *(3) despite a 44 percent decrease in the demand*
14 *for information technology workers in the private sec-*
15 *tor, the Information Technology Association of Amer-*
16 *ica reported in 2001 that employers will need to fill*
17 *over 900,000 new information technology jobs and*
18 *will be unable to find qualified workers for 425,000*
19 *of those jobs;*

20 *(4) to highlight the urgency of this situation, in*
21 *January 2001, the General Accounting Office added*
22 *the Federal Government’s human capital management*
23 *to its list of high-risk problems for which an effective*
24 *solution must be found;*

25 *(5) despite efforts to increase flexibility in Fed-*
26 *eral agencies’ employment practices, compensation*

1 *issues continue to severely restrain recruitment for*
 2 *Federal agencies; and*

3 *(6) an effective, efficient, and economical re-*
 4 *sponse to this crisis would be to create a vibrant, on-*
 5 *going exchange effort designed to share talent, exper-*
 6 *tise, and advances in management between leading-*
 7 *edge businesses and Federal agencies engaged in best*
 8 *practices.*

9 **SEC. 3. INFORMATION TECHNOLOGY EXCHANGE PROGRAM.**

10 *(a) IN GENERAL.—Subpart B of part III of title 5,*
 11 *United States Code, is amended by adding at the end the*
 12 *following:*

13 **“CHAPTER 37—INFORMATION**
 14 **TECHNOLOGY EXCHANGE PROGRAM**

“Sec.

“3701. Definitions.

“3702. General provisions.

“3703. Assignment of employees to private sector organizations.

“3704. Assignment of employees from private sector organizations.

“3705. Application to Office of the Chief Technology Officer of the District of Columbia.

“3706. Reporting requirement.

“3707. Regulations.

15 **“§3701. Definitions**

16 *“For purposes of this chapter—*

17 *“(1) the term ‘agency’ means an Executive agen-*
 18 *cy, but does not include the General Accounting Of-*
 19 *fice; and*

20 *“(2) the term ‘detail’ means—*

1 “(A) the assignment or loan of an employee
2 of an agency to a private sector organization
3 without a change of position from the agency
4 that employs the individual, or

5 “(B) the assignment or loan of an employee
6 of a private sector organization to an agency
7 without a change of position from the private
8 sector organization that employs the individual,
9 whichever is appropriate in the context in which such
10 term is used.

11 **“§ 3702. General provisions**

12 “(a) ASSIGNMENT AUTHORITY.—On request from or
13 with the agreement of a private sector organization, and
14 with the consent of the employee concerned, the head of an
15 agency may arrange for the assignment of an employee of
16 the agency to a private sector organization or an employee
17 of a private sector organization to the agency. An eligible
18 employee is an individual who—

19 “(1) works in the field of information technology
20 management;

21 “(2) is considered an exceptional performer by
22 the individual’s current employer; and

23 “(3) is expected to assume increased information
24 technology management responsibilities in the future.

1 *An employee of an agency shall be eligible to participate*
2 *in this program only if the employee is employed at the*
3 *GS-11 level or above (or equivalent) and is serving under*
4 *a career or career-conditional appointment or an appoint-*
5 *ment of equivalent tenure in the excepted service.*

6 “(b) *AGREEMENTS.—Each agency that exercises its*
7 *authority under this chapter shall provide for a written*
8 *agreement between the agency and the employee concerned*
9 *regarding the terms and conditions of the employee’s assign-*
10 *ment. In the case of an employee of the agency, the agree-*
11 *ment shall—*

12 “(1) *require the employee to serve in the civil*
13 *service, upon completion of the assignment, for a pe-*
14 *riod equal to the length of the assignment; and*

15 “(2) *provide that, in the event the employee fails*
16 *to carry out the agreement (except for good and suffi-*
17 *cient reason, as determined by the head of the agency*
18 *from which assigned) the employee shall be liable to*
19 *the United States for payment of all expenses of the*
20 *assignment.*

21 *An amount under paragraph (2) shall be treated as a debt*
22 *due the United States.*

23 “(c) *TERMINATION.—Assignments may be terminated*
24 *by the agency or private sector organization concerned for*
25 *any reason at any time.*

1 “(d) *DURATION.*—Assignments under this chapter
2 shall be for a period of between 6 months and 1 year, and
3 may be extended in 3-month increments for a total of not
4 more than 1 additional year, except that no assignment
5 under this chapter may commence after the end of the 5-
6 year period beginning on the date of the enactment of this
7 chapter.

8 “(e) *ASSISTANCE.*—The Chief Information Officers
9 Council, by agreement with the Office of Personnel Manage-
10 ment, may assist in the administration of this chapter, in-
11 cluding by maintaining lists of potential candidates for as-
12 signment under this chapter, establishing mentoring rela-
13 tionships for the benefit of individuals who are given as-
14 signments under this chapter, and publicizing the program.

15 **“§3703. Assignment of employees to private sector or-**
16 **ganizations**

17 “(a) *IN GENERAL.*—An employee of an agency as-
18 signed to a private sector organization under this chapter
19 is deemed, during the period of the assignment, to be on
20 detail to a regular work assignment in his agency.

21 “(b) *COORDINATION WITH CHAPTER 81.*—Notwith-
22 standing any other provision of law, an employee of an
23 agency assigned to a private sector organization under this
24 chapter is entitled to retain coverage, rights, and benefits
25 under subchapter I of chapter 81, and employment during

1 *the assignment is deemed employment by the United States,*
2 *except that, if the employee or the employee's dependents*
3 *receive from the private sector organization any payment*
4 *under an insurance policy for which the premium is wholly*
5 *paid by the private sector organization, or other benefit of*
6 *any kind on account of the same injury or death, then, the*
7 *amount of such payment or benefit shall be credited against*
8 *any compensation otherwise payable under subchapter I of*
9 *chapter 81.*

10 “(c) *REIMBURSEMENTS.*—*The assignment of an em-*
11 *ployee to a private sector organization under this chapter*
12 *may be made with or without reimbursement by the private*
13 *sector organization for the travel and transportation ex-*
14 *penses to or from the place of assignment, subject to the*
15 *same terms and conditions as apply with respect to an em-*
16 *ployee of a Federal agency or a State or local government*
17 *under section 3375, and for the pay, or a part thereof, of*
18 *the employee during assignment. Any reimbursements shall*
19 *be credited to the appropriation of the agency used for pay-*
20 *ing the travel and transportation expenses or pay.*

21 “(d) *TORT LIABILITY; SUPERVISION.*—*The Federal*
22 *Tort Claims Act and any other Federal tort liability statute*
23 *apply to an employee of an agency assigned to a private*
24 *sector organization under this chapter. The supervision of*
25 *the duties of an employee of an agency so assigned to a*

1 *private sector organization may be governed by an agree-*
2 *ment between the agency and the organization.*

3 **“§3704. Assignment of employees from private sector**
4 **organizations**

5 “(a) *IN GENERAL.*—An employee of a private sector
6 organization assigned to an agency under this chapter is
7 deemed, during the period of the assignment, to be on detail
8 to such agency.

9 “(b) *TERMS AND CONDITIONS.*—An employee of a pri-
10 vate sector organization assigned to an agency under this
11 chapter—

12 “(1) *may, notwithstanding section 209 of title*
13 *18, continue to receive pay and benefits from the pri-*
14 *vate sector organization from which he is assigned;*

15 “(2) *is deemed, notwithstanding subsection (a),*
16 *to be an employee of the agency for the purposes of—*

17 “(A) *chapter 73;*

18 “(B) *sections 201, 203, 205, 207, 208, 209,*
19 *603, 606, 607, 643, 654, 1905, and 1913 of title*
20 *18;*

21 “(C) *sections 1343, 1344, and 1349(b) of*
22 *title 31;*

23 “(D) *the Federal Tort Claims Act and any*
24 *other Federal tort liability statute;*

25 “(E) *the Ethics in Government Act of 1978;*

1 “(F) section 1043 of the Internal Revenue
2 Code of 1986; and

3 “(G) section 27 of the Office of Federal Pro-
4 curement Policy Act; and

5 “(3) is subject to such regulations as the Presi-
6 dent may prescribe.

7 The supervision of an employee of a private sector organiza-
8 tion assigned to an agency under this chapter may be gov-
9 erned by agreement between the agency and the private sec-
10 tor organization concerned. Such an assignment may be
11 made with or without reimbursement by the agency for the
12 pay, or a part thereof, of the employee during the period
13 of assignment, or for any contribution of the private sector
14 organization to employee benefit systems.

15 “(c) COORDINATION WITH CHAPTER 81.—An em-
16 ployee of a private sector organization assigned to an agen-
17 cy under this chapter who suffers disability or dies as a
18 result of personal injury sustained while performing duties
19 during the assignment shall be treated, for the purpose of
20 subchapter I of chapter 81, as an employee as defined by
21 section 8101 who had sustained the injury in the perform-
22 ance of duty, except that, if the employee or the employee’s
23 dependents receive from the private sector organization any
24 payment under an insurance policy for which the premium
25 is wholly paid by the private sector organization, or other

1 *benefit of any kind on account of the same injury or death,*
 2 *then, the amount of such payment or benefit shall be cred-*
 3 *ited against any compensation otherwise payable under*
 4 *subchapter I of chapter 81.*

5 **“§3705. Application to Office of the Chief Technology**
 6 **Officer of the District of Columbia**

7 “(a) *IN GENERAL.*—*The Chief Technology Officer of*
 8 *the District of Columbia may arrange for the assignment*
 9 *of an employee of the Office of the Chief Technology Officer*
 10 *to a private sector organization, or an employee of a private*
 11 *sector organization to such Office, in the same manner as*
 12 *the head of an agency under this chapter.*

13 “(b) *TERMS AND CONDITIONS.*—*An assignment made*
 14 *pursuant to subsection (a) shall be subject to the same terms*
 15 *and conditions as an assignment made by the head of an*
 16 *agency under this chapter, except that in applying such*
 17 *terms and conditions to an assignment made pursuant to*
 18 *subsection (a), any reference in this chapter to a provision*
 19 *of law or regulation of the United States shall be deemed*
 20 *to be a reference to the applicable provision of law or regu-*
 21 *lation of the District of Columbia, including the applicable*
 22 *provisions of the District of Columbia Government Com-*
 23 *prehensive Merit Personnel Act of 1978 (sec. 1–601.01 et*
 24 *seq., D.C. Official Code) and section 601 of the District of*

1 *Columbia Campaign Finance Reform and Conflict of Inter-*
 2 *est Act (sec. 1–1106.01, D.C. Official Code).*

3 “(c) *DEFINITION.*—For purposes of this section, the
 4 term ‘Office of the Chief Technology Officer’ means the office
 5 established in the executive branch of the government of the
 6 District of Columbia under the Office of the Chief Tech-
 7 nology Officer Establishment Act of 1998 (sec. 1–1401 et
 8 seq., D.C. Official Code).

9 **“§3706. Reporting requirement**

10 “(a) *IN GENERAL.*—The Office of Personnel Manage-
 11 ment shall, not later than April 30 and October 31 of each
 12 year, prepare and submit to the Committee on Government
 13 Reform of the House of Representatives and the Committee
 14 on Governmental Affairs of the Senate a semiannual report
 15 summarizing the operation of this chapter during the im-
 16 mediately preceding 6-month period ending on March 31
 17 and September 30, respectively.

18 “(b) *CONTENT.*—Each report shall include, with re-
 19 spect to the 6-month period to which such report relates—

20 “(1) the total number of individuals assigned to,
 21 and the total number of individuals assigned from,
 22 each agency during such period;

23 “(2) a brief description of each assignment in-
 24 cluded under paragraph (1), including—

1 “(A) the name of the assigned individual, as
2 well as the private sector organization and the
3 agency (including the specific bureau or other
4 agency component) to or from which such indi-
5 vidual was assigned;

6 “(B) the respective positions to and from
7 which the individual was assigned, including the
8 duties and responsibilities and the pay grade or
9 level associated with each; and

10 “(C) the duration and objectives of the indi-
11 vidual’s assignment; and

12 “(3) such other information as the Office con-
13 siders appropriate.

14 “(c) PUBLICATION.—A copy of each report submitted
15 under subsection (a)—

16 “(1) shall be published in the Federal Register;
17 and

18 “(2) shall be made publicly available on the
19 Internet.

20 “(d) AGENCY COOPERATION.—On request of the Office,
21 agencies shall furnish such information and reports as the
22 Office may require in order to carry out this section.

1 **“§3707. Regulations**

2 *“The Director of the Office of Personnel Management*
 3 *shall prescribe regulations for the administration of this*
 4 *chapter.”.*

5 (b) *REPORT.—Not later than 4 years after the date*
 6 *of the enactment of this Act, the General Accounting Office*
 7 *shall prepare and submit to the Committee on Government*
 8 *Reform of the House of Representatives and the Committee*
 9 *on Governmental Affairs of the Senate a report on the oper-*
 10 *ation of chapter 37 of title 5, United States Code (as added*
 11 *by this section). Such report shall include—*

12 (1) *an evaluation of the effectiveness of the pro-*
 13 *gram established by such chapter; and*

14 (2) *a recommendation as to whether such pro-*
 15 *gram should be continued (with or without modifica-*
 16 *tion) or allowed to lapse.*

17 (c) *CLERICAL AMENDMENT.—The analysis for part III*
 18 *of title 5, United States Code, is amended by inserting after*
 19 *the item relating to chapter 35 the following:*

“37. Information Technology Exchange Program 3701”.

20 **SEC. 4. ETHICS PROVISIONS.**

21 (a) *ONE-YEAR RESTRICTION ON CERTAIN COMMU-*
 22 *NICATIONS.—Section 207(c)(2)(A) of title 18, United States*
 23 *Code, is amended—*

24 (1) *by striking “or” at the end of clause (iii);*

1 (2) *by striking the period at the end of clause*
2 *(iv) and inserting “; or”; and*
3 (3) *by adding at the end the following:*

4 “(v) *an employee of a private sector organi-*
5 *zation assigned to an agency under chapter 37*
6 *of title 5.”.*

7 (b) *DISCLOSURE OF CONFIDENTIAL INFORMATION.—*
8 *Section 1905 of title 18, United States Code, is amended*
9 *by inserting “or being an employee of a private sector orga-*
10 *nization who is, or was within the past three years, as-*
11 *signed to an agency under chapter 37 of title 5,” after “(15*
12 *U.S.C. 1311–1314).”.*

13 (c) *CONTRACT ADVICE.—Section 207 of title 18,*
14 *United States Code, is amended by adding at the end the*
15 *following:*

16 “(l) *CONTRACT ADVICE BY FORMER DETAILS.—Who-*
17 *ever, being an employee of a private sector organization as-*
18 *signed to an agency under chapter 37 of title 5, within one*
19 *year after the end of that assignment, knowingly represents*
20 *or aids, counsels, or assists in representing any other person*
21 *(except the United States) in connection with any contract*
22 *with that agency shall be punished as provided in section*
23 *216 of this title.”.*

24 (d) *RESTRICTION ON DISCLOSURE OF PROCUREMENT*
25 *INFORMATION.—Section 27 of the Office of Federal Procure-*

1 *ment Policy Act (41 U.S.C. 423) is amended in subsection*
 2 *(a)(1) by adding at the end the following new sentence: “In*
 3 *the case of an employee of a private sector organization as-*
 4 *signed to an agency under chapter 37 of title 5, United*
 5 *States Code, in addition to the restriction in the preceding*
 6 *sentence, such employee shall not, other than as provided*
 7 *by law, knowingly disclose contractor bid or proposal infor-*
 8 *mation or source selection information during the three-*
 9 *year period after the end of the assignment of such em-*
 10 *ployee.”.*

11 **SEC. 5. REPORT ON EXISTING EXCHANGE PROGRAMS.**

12 *(a) EXCHANGE PROGRAM DEFINED.—For purposes of*
 13 *this section, the term “exchange program” means an execu-*
 14 *tive exchange program, the program under subchapter VI*
 15 *of chapter 33 of title 5, United States Code, and any other*
 16 *program which allows for—*

17 *(1) the assignment of employees of the Federal*
 18 *Government to non-Federal employers;*

19 *(2) the assignment of employees of non-Federal*
 20 *employers to the Federal Government; or*

21 *(3) both.*

22 *(b) REPORTING REQUIREMENT.—Not later than 1 year*
 23 *after the date of the enactment of this Act, the Office of Per-*
 24 *sonnel Management shall prepare and submit to the Com-*
 25 *mittee on Government Reform of the House of Representa-*

1 *tives and the Committee on Governmental Affairs of the*
 2 *Senate a report identifying all existing exchange programs.*

3 *(c) SPECIFIC INFORMATION.—The report shall, for*
 4 *each such program, include—*

5 *(1) a brief description of the program, including*
 6 *its size, eligibility requirements, and terms or condi-*
 7 *tions for participation;*

8 *(2) specific citation to the law or other authority*
 9 *under which the program is established;*

10 *(3) the names of persons to contact for more in-*
 11 *formation, and how they may be reached; and*

12 *(4) any other information which the Office con-*
 13 *siders appropriate.*

14 **SEC. 6. TECHNICAL AND CONFORMING AMENDMENTS.**

15 *(a) AMENDMENTS TO TITLE 5, UNITED STATES*
 16 *CODE.—Title 5, United States Code, is amended—*

17 *(1) in section 3111, by adding at the end the fol-*
 18 *lowing:*

19 *“(d) Notwithstanding section 1342 of title 31, the head*
 20 *of an agency may accept voluntary service for the United*
 21 *States under chapter 37 of this title and regulations of the*
 22 *Office of Personnel Management.”;*

23 *(2) in section 4108, by striking subsection (d);*

24 *and*

1 (3) in section 7353(b), by adding at the end the
2 following:

3 “(4) Nothing in this section precludes an employee of
4 a private sector organization, while assigned to an agency
5 under chapter 37, from continuing to receive pay and bene-
6 fits from such organization in accordance with such chap-
7 ter.”.

8 (b) *OTHER AMENDMENTS.*—Section 125(c)(1) of Pub-
9 lic Law 100–238 (5 U.S.C. 8432 note) is amended—

10 (1) in subparagraph (B), by striking “or” at the
11 end;

12 (2) in subparagraph (C), by striking “and” at
13 the end and inserting “or”; and

14 (3) by adding at the end the following:

15 “(D) an individual assigned from a Federal
16 agency to a private sector organization under
17 chapter 37 of title 5, United States Code; and”.

Chairman SENSENBRENNER. Let me say that I would hope that the Committee will deal with this bill expeditiously. It was scheduled to be on the floor today. I had a heated conversation with the majority leader, asserting the Committee's jurisdiction, so we got it pulled off the floor. And we have a sequential that expires like tonight.

So in order to make sure that we have jurisdiction and we keep jurisdiction on other bills of this nature that will come up in the future, we need to report the bill out today favorably, adversely, or whatever.

And with that, I yield to the gentleman from Texas, Mr. Smith. Mr. SMITH. Thank you, Mr. Chairman.

H.R. 3925, the "Digital Tech Corps Act of 2002" was referred to this Committee because of the criminal provisions related to ethics requirements for Federal employees. The Committee was given 1 day to report the bill, as you just mentioned. Although this referral time is short, I hope my colleagues will support the bill.

And I will have one amendment, in a few minutes, to offer to it.

This bill provides a creative solution to a looming problem within the Federal Government. As Chairman of the Subcommittee on Crime, I'm particularly interested in high-tech issues related to law enforcement and homeland security.

Just recently, the Subcommittee reported out the Cyber Security Enhancement Act of 2002. This bill, as well as several other bills under the Committee's jurisdiction, are designed to improve the Federal Government's efforts to become more technologically advanced.

The Digital Tech Corps Act of 2002, which we are now considering, will go even further to address this effort. It will allow private sector employees detailed to Federal agencies to be deemed Federal employees for certain purposes. As such, they must adhere to the same ethics, revolving-door prohibitions, and accountability provisions covering Federal employees.

We have provided the resources for law enforcement and other Government entities to improve their technology. We have also updated the criminal laws to account for new technology. This bill provides an incentive to promote the development of expertise and information technology management among the Federal workforce.

The General Accounting Office has found that the Federal Government is facing a substantial shortage of high-tech workers and that the shortage will worsen because 34 percent of the Federal workforce will be eligible to retire in the next 5 years.

Expected retirements are even worse for the information technology fields, where the GAO estimates that 50 percent of the Government's technological workforce are eligible to retire by 2006.

Information technology is essential to our national security, law enforcement efforts, and the economy. This program will expose Federal employees to more leading-edge information technology and should also make Federal service more attractive to the private sector employees.

I support the bill and hope my colleagues will do the same.

I yield back the balance of my time.

Chairman SENSENBRENNER. The gentleman from Virginia, Mr. Scott, do you have an opening statement?

Mr. SCOTT. Which bill is this?

Chairman SENSENBRENNER. This is the Digital Information Corps. Act of 2002.

Okay, all Members will be allowed to put opening statements in the record.

For what purpose does the gentlewoman from California seek recognition?

Ms. LOFGREN. Mr. Chairman, I wanted to clarify for the record an ambiguity that might exist in H.R. 3925.

Chairman SENSENBRENNER. The gentlewoman is recognized for 5 minutes.

Ms. LOFGREN. At page 8, lines 15 through 18, the bill states that an employee of a private sector organization assigned to an agency is deemed an employee of the agency for purposes of section 208 of title 18.

Section 208 makes it a crime for a Federal employee to take any action in their official capacity if they have a personal financial interest in the matter or if an organization in which they are serving as an employee has a financial interest in the matter.

I have no doubt that the authors of H.R. 3925 intended to make detailees fully subject to this requirement. However, because the bill considers detailees employees of the agency, there is some ambiguity over whether they will be permitted to work on matters that have a financial impact on their private organizations.

I was planning to introduce an amendment to clarify this ambiguity, but legislative counsel has assured my staff that a fair reading of the bill and section 208 already prohibits detailees from working on such matters. I wanted to be clear, for the record, though, that while detailees are considered employees of the agency, subject to section 208, they are also employees of their private organization that are prohibited from working on matters that affect the financial interests of their company.

I think we all agree that section 208 provides strong ethical protections that prevent public acts taken for private gain.

Thank you, Mr. Chairman, for allowing me to clarify that these provisions fully apply to detailees. And I yield back the balance of my time.

Chairman SENSENBRENNER. Are there amendments?

The gentleman from Texas, Mr. Smith.

Mr. SMITH. Mr. Chairman, I have an amendment at the desk.

Chairman SENSENBRENNER. The Clerk will report the amendment.

The CLERK. Amendment to H.R. 3925, as reported, offered by Mr. Smith of Texas.

Mr. SMITH. Mr. Chairman, I ask unanimous consent that the amendment be considered as read.

Chairman SENSENBRENNER. Without objection, so ordered.

[The amendment follows:]

AMENDMENTS TO H.R. 3925, as Reported
OFFERED BY MR. SMITH OF TEXAS

Page 8, lines 12-13, strike “, notwithstanding section 209 of title 18,”.

Page 14, strike lines 4 through 6 and insert the following:

1 “(v) assigned from a private sector organi-
 2 zation to an agency under chapter 37 of title
 3 5.”.

Page 17, after line 7, insert the following:

4 (b) AMENDMENT TO TITLE 18, UNITED STATES
 5 CODE.—Section 209 of title 18, United States Code, is
 6 amended by adding at the end the following:
 7 “(g)(1) This section does not prohibit an employee
 8 of a private sector organization, while assigned to an agen-
 9 cy under chapter 37 of title 5, from continuing to receive
 10 pay and benefits from such organization in accordance
 11 with such chapter.
 12 “(2) For purposes of this subsection, the term ‘agen-
 13 cy’ means an agency (as defined by section 3701 of title
 14 5) and the Office of the Chief Technology Officer of the
 15 District of Columbia.”.

Page 17, line 8, strike “(b)” and insert “(c)”.

Chairman SENSENBRENNER. And the gentleman is recognized for 5 minutes.

Mr. SMITH. Thank you, Mr. Chairman.

Mr. Chairman, section 3 of H.R. 3925 provides for an information technology exchange program. Section 3704 of title 5 permits the assignment of private sector employees to Federal Government agencies as part of this program.

Title 18 U.S.C., paragraph 209, currently prohibits a Federal employee from receiving salary or any compensation for his or her services as a Federal employee from any source other than the U.S. Government.

The bill permits a private sector employer to continue to compensate its employee while that employee is detailed to the Federal Government. Accordingly, my amendment simply moves the exception from title 5 to title 18 U.S.C. 209 and permits the private sector employer participating in the program to continue to pay the private sector detailee's salary and benefits.

This amendment also includes a grammatical correction to section 4 of the bill, at the recommendation of legislative counsel.

And, Mr. Chairman, I urge my colleagues to support the amendment and yield back the balance of my time.

Chairman SENSENBRENNER. The question is on the amendment by the gentleman from Texas.

Those in favor will say aye.

Opposed, no.

The ayes appear to have it. The ayes have it. The amendment is agreed to.

Are there further amendments?

If not, the Chair notes the presence of a——

Mr. NADLER. Mr. Chairman, I have an amendment.

Chairman SENSENBRENNER. The clerk will report the amendment.

Mr. NADLER. Mr. Chairman, I am offering Mr. Conyers' amendment.

Chairman SENSENBRENNER. The clerk will report the Conyers amendment, which is not the Conyers amendment anymore. [Laughter.]

The Conyers amendment has arrived. Now the clerk will report the amendment.

The CLERK. Amendment to H.R. 3925, as reported, offered by Mr. Conyers of Michigan—Mr. Nadler of Michigan—Mr. Nadler of New York. [Laughter.]

Page 14, line——

Chairman SENSENBRENNER. Without objection, the amendment is considered as read.

[The amendment follows:]

**AMENDMENT TO H.R. 3925, AS REPORTED
OFFERED BY MR. CONYERS OF MICHIGAN**

Page 14, line 10, strike the comma after "is".

Page 14, line 10, strike "within the past three years, "

Chairman SENSENBRENNER. And the gentleman from New York is recognized for 5 minutes.

Mr. NADLER. Thank you, Mr. Chairman.

I just want to clarify that I am offering Mr. Conyers' amendment not his district. [Laughter.]

Mr. Chairman, this bill gives people in the private sector short-term contracts to supervise information technology programs and departments in the Government. This raises an issue as to how we can assure that their loyalty to their private firms and industry will not come before their commitment to the public duties of the agency that is serving the taxpayers. These detailees, who have all kinds of access to private information that exists in the Government databases—confidential information involving individuals, private companies, even their private industry competitors.

That is why I am offering an amendment that will protect this information. There is no reason for trade secrets, private information, and unpublished information that is valuable to a company in a competitive market, to be given away by the Government through this program.

Post-employment ethics laws are not enough to prevent people from cashing in on information when they can. This amendment will ensure that any private sector employee who learns a trade secret in the course of Government detail will be prohibited from disclosing such secrets.

I still have concerns about private sector employees having any access whatsoever to a competitor's proprietary information, and wanted to offer a broader amendment. However, I appreciate the Chairman working with us on this narrower attempt to fix this aspect of the bill.

There's no reason to allow such individuals to profit from confidential information and trade secrets 1 or 2 or 3 years after their employment has terminated. If the information is a trade secret or a nonpublic disclosure of value, someone seeking to steal that information and gain from it should be prevented from doing so at any time.

As a result, this amendment removes the provision that would allow sharing confidential information after 3 years. This is not in any way a partisan issue, and I hope all our colleagues on both sides of the aisle will support this common-sense amendment.

Thank you, Mr. Chairman. I yield back.

Chairman SENSENBRENNER. The gentleman from Texas, Mr. Smith.

Mr. SMITH. Mr. Chairman, I don't know whether to recommend supporting or opposing this amendment. I do have a couple questions for the gentleman from New York.

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. SMITH. Thank you.

Mr. Chairman, let me direct my first question to Mr. Nadler, and it is this, if I could get his attention for a minute?

I was wondering why the gentleman from New York thought it was necessary to go beyond the 3-year limit we already have in the bill and make it, in effect, permanent. It seems to me that under normal procedure and under normal statutes, where usually you cannot share privileged information for 1 year, we already have—

Mr. NADLER. I can't hear you. Usually what?

Mr. SMITH. I'm asking you why it's necessary to make—

Mr. NADLER. I heard that. I didn't hear what you said after the word "usually."

Mr. SMITH. Permanent instead of just allowing the 3-year term we have in the bill. It seems to me that we might well argue that the amendment is too broad and unnecessarily long and in its application, where most statutes just prohibit the sharing of information for 1 year, you have a 3-year protection in the bill. And you're making it permanent forever.

Mr. NADLER. Will the gentleman yield?

Mr. SMITH. I'd be happy to yield.

Mr. NADLER. Thank you.

The reason for the necessity of a longer period here is that it's the use—it's that the power of Government is used to obtain—could be used to spread or obtain this information.

In other words, normally, you work for company A, you leave, you go to company B. There's a statute.

Mr. SMITH. Right.

Mr. NADLER. But if you work for the Federal Government, you're detailed to work company A, you go back to the Federal Government. While you're at the Federal Government maybe later you go to company B or maybe while you're at the Federal Government you give that information. The fact is the Federal Government is intruding here, and that should be prohibited without a time limit.

In other words, if it weren't for the action of Government, you wouldn't have that information in the first place.

Mr. SMITH. Right. But as you just pointed out, in normal statutes, you say 1-year prohibition. You've got a permanent; we have a 3-year in the bill. It just seems to me that 3-year would be adequate.

Let me also ask the gentleman to consider section—

Mr. NADLER. Let me just answer that for a second?

Mr. SMITH. Okay.

Mr. NADLER. The principle is that since you learned this information in this company because of the Government action, you should never be able to disclose it to the detriment of that company. This isn't simply a private employment contract.

Mr. SMITH. Okay. But the situation that the gentleman just—reclaiming my time, the situation that the gentleman just described, which might also be called a conflict of interest or taking some action for financial gain, is covered by section 208 within the bill already. So I don't know why, if that's your concern, we wouldn't have already covered it?

Mr. NADLER. But for the fact—will the gentleman yield?

Mr. SMITH. Yes.

Mr. NADLER. But the for the fact that you worked in the Government agency, you would never have learned the trade secret of the competitor. It isn't the situation where you're going from one company to another.

Because you work in a Government agency, you learn this trade secret. You should never be able to take advantage of that, because you learned it because of the Government action, because you're a Government employee.

In other words, the company is compelled to give this information to the Government. In a normal situation, you work for company A; in the course of that, company A willingly lets you learn information, knowing that at some point you're going to leave—

Mr. SMITH. Let me reclaim my time. Let me reclaim my time.

Mr. Chairman, I know that the gentleman amendment is well-motivated, and I'll take him at his word, and I'll go on and support it. But I do think it's unnecessary, both unnecessarily broad and unnecessary because of section 208.

But I'd recommend that we go on and approve it.

Mr. NADLER. I appreciate that.

Chairman SENSENBRENNER. The question is on the amendment by the gentleman from New York, Mr. Nadler, a derivative of the gentleman from Michigan, Mr. Conyers.

Those in favor will say aye.

Opposed, no.

The ayes appear to have it. The ayes have it, and the amendment is agreed to.

Are there further amendments?

If not, the Chair notes the presence of a reporting quorum.

Those in favor of reporting the bill favorably will say aye.

Opposed, no.

The ayes appear to have it. The ayes have it, and the bill as amended is reported favorably.

Without objection, the bill be reported—without objection, all Members will have 2 days in which to submit additional supplemental, dissenting, or minority views. And without objection, the Chair will be authorized to go to conference pursuant to House rules.

DISSENTING VIEWS

I dissent from the Committee Report on H.R. 3925. While improvements were made in the bill during the Committee's markup of the legislation, troubling aspects of the bill remain that fall outside of the Judiciary Committee's jurisdiction and were, therefore, unaddressed at markup. Primary among these concerns is the concern that, while the bill purports to enhance training for high tech and Government workers, no training component is required by the bill. Additional concerns are discussed herein.

The "Digital Tech Corps Act" would create an exchange program for mid-level information technology workers in the Government and private sector. The central goal of the bill is to create "cross-pollenization" between the public and private sector information technology workforce so that employees of each will receive specialized training unavailable with their current employers. The bill is also designed to address purported shortage of information technology workers in the Federal Government, where half of that workforce may retire by 2006.

BACKGROUND

On March 20, 2002, the full Judiciary Committee marked up the bill and voted to report it favorably out of Committee by voice vote after adopting two amendments. Rep. Jerrold Nadler (D-NY) offered an amendment on my behalf which would prevent private workers on loan to the Government from revealing confidential information and trade secrets acquired during their Federal Government assignments. Previously, the bill allowed private sector workers to disclose such information only 3 years after leaving their Federal assignment. The Committee also adopted an amendment by Rep. Lamar Smith (R-TX) which protects private sector employee's private pay and benefits during their Federal Government assignment.

Specifically, the bill allows, but does not require, that upon the request of a private sector organization, an agency can "detail" one of its employees to a private sector organization or accept the assignment of a private sector employee to the agency. An employee who is eligible to participate in this program must work in IT management, be an exceptional employee and someone who is expected to assume an increased managerial role in the future. For Government employees to participate, they must be career appointees, as opposed to political appointees, as serve under a GS-11 level or above.

Any employee of a Federal agency must agree that they will serve in civil service after being detailed to a private sector organization for at least the length of the detail. Additionally, the bill specifies that Federal employees will continue to receive Federal employment benefits to the extent such benefits are not duplicative

of those provided by the private entity and Federal employees are covered by the Federal Tort Claims Act while on detail to the private sector.

Any employee of a private sector organization detailed to a Government agency may be paid by the private entity and is covered by a number of the same laws as Federal employees.

Both Government and private sector employees are limited to 6 month to 1 year assignments, and thereafter may receive additional 3 month extensions up to one additional year.

Private sector employees who participate in this program are subject to a number of ethics rules. First, such employees may not lobby the agency to which they were detailed for 1 year after the detail expires. Second, such employees are barred from disclosing trade secrets discovered during the course of a detail. Third, such employees are prohibited for 1 year from assisting an employer in getting a contract from the agency to which they were detailed. Fourth, such employees may not disclose bidding information discovered during the course of a detail.

CONCERNS RAISED BY H.R. 3925

I am concerned that the bill fails to require that employees participate in any training program that will assure that the central goal of the program is met. There is no requirement that the assignment accomplish any defined training objectives. Federal employees will simply be sent upon request from the private sector, regardless of whether that assignment meets the Government's needs. During the markup of this bill in the Government Reform Committee, Rep. Henry A. Waxman (D-CA) offered an amendment that would have established a comprehensive training program for information technology workers, run by the Office of Personnel Management. This amendment was defeated. If the goal of this program is to train Government workers, then it should be run by people with expertise in training who can keep the overall training needs of the Government's information technology workforce in mind. Rep. Waxman's amendment would have ensured this.

My second concern involves employees access to trade secrets. While—because of the enactment of the Conyers amendment—the bill does restrict the disclosure of trade secrets and other proprietary information uncovered by a private sector employee on detail, I remain concerned about whether private sector employees should have access to this information at all. It appears manifestly unfair to give a private sector employee detailed to the Federal Government access to a competitor's most confidential information, information the competitor gave to the Government upon assurances it would remain confidential.

A related issue is the degree to which private sector employees detailed to the Government should be permitted to personally participate in a decision, approval, recommendation or advisory process involving or affecting the financial interests of his or her private company. The Office of Legislative Counsel has suggested that this is not a valid concern because these detailed employees would be covered by existing Federal laws which prohibit involvement in matters in which an employee has a personal financial interest. I believe, however, that this should be made explicit in the bill.

My third concern is that the bill does not require that the number of employees detailed to the private sector be matched by private sector employees detailed to the agency. As such, there are concerns that Government employees may be used to assist ailing private sector companies. Furthermore, there are no limits on the number of Federal employees who can be sent out to work in these companies at taxpayer expense. The bill would also require taxpayers to pay for both private sector employees who are detailed to the Government and Government employees who are detailed to the private sector. The costs of private sector employee's salary and benefits while on assignment to the Government could be billed back to the Federal Government as overhead on certain contracts.

The lack of safeguards in these areas raises several important questions. At a time when the Federal Government expects to face a shortage in the Government's information technology workforce, this program will allow even more of these Federal workers to leave their current positions by sending some of them into the private sector and it is, therefore, unclear how that achieves the goal of meeting Federal information technology needs. Some have suggested that it does not because the actual purpose of the bill is to create a holding place of temporary jobs for under employed tech workers whose companies have been hit by the economic downturn. It also sends Federal employees, paid with Federal taxpayer money, to private corporations to help those companies advance their information technology work and profits.

Finally, I am concerned about the cost of this new program. The Congressional Budget Office has estimated that the costs of this program will be approximately \$500,000. I believe this estimate is very low because there is no limit on the number of Federal employees who may be on assignment to the private sector at a time, those employees may need to be replaced by contract employees or new hires outside of this program, and the Federal Government may get charged for some of the private employees salaries and benefits under Government contracts. Nonetheless, this bill does not provide for any new authorizations, budgeting authority or tax expenditures.

CONCLUSION

While I am pleased that this bill was improved in the Judiciary Committee markup, I remain concerned that in a number of critical ways, most notably a lack of training requirements, the bill is not narrowly tailored to its stated purpose. Because the bill could further efforts of corporate espionage, expand corporate welfare, excessively burden the Federal budget, and fail to accomplish its core goal of training Federal and private sector workers, I dissent from this legislation.

JOHN CONYERS, JR.

